

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4301 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PRINCIPAL

Versus

DIRECTOR OF EDUCATION

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Appearance:

MR HR LATHIGARA for Petitioners

MR. MUKESH PATEL, A.G.P. for respondent Nos. 1 and 2

Respondent No. 3 deleted as per endorsement made by

Mr. H.R. Lathigara on default submission.

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CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 20/12/96

ORAL JUDGEMENT

The petitioners seek a direction on the respondent No. 1, Director of Education of the State of Gujarat to release the salary of the cashier Shri B.K. Turiya (who was respondent No. 3 and who died during the pendency of this petition). According to the petitioners Mr. Turiya was working with the petitioner No. 1 college which is run by the petitioner No. 2 Municipality and the

respondent No. 1 had wrongly withheld the salary payable to Mr. Turiya as per the salary statements submitted by the petitioner no. 1.

2. Mr. Turiya was initially appointed as a revenue clerk in the Upleta Municipality i.e. the petitioner No. 2 and thereafter by an order dated 23.7.1973 he was transferred to the petitioner No.1 college which was run by the said Municipality. It appears that the post of cashier fell vacant and one N.B. Mardiya was promoted to that post. Mr. Turiya had passed B.Com. in 1974, M.Com. in 1976 and LL.B in 1978. Mr. B.K. Turiya represented to the Saurashtra University with which the said college was affiliated that injustice was done to him by promoting Maradiya as a cashier and that he ought to have been promoted to that post. The University Syndicate considered this grievance and on 13.6.1978 it decided that since Mr. Mardiya was not fulfilling the prescribed minimum qualification under Ordinance 189 he should be reverted as a junior clerk and the post of cashier may be filled in from the seniority list and that the management may consider giving of promotion to Mr. Turiya. Communication to this effect was sent by the University to the Municipal College on 7.7.1978 and the original letter which is referred to in paragraph 12 of this petition is placed on the record of this case. As per the said direction Mr. Turiya was appointed as a cashier with effect from 1.2.1979 under a Resolution dated 24.1.1979. However, he was not granted the pay scale of cashier which was Rs. 330-560 at the relevant time and the pay scale admissible to junior clerk of Rs. 260-400 was continued to be paid to him. Thereupon Mr. Turiya filed Civil Suit No. 205 of 1980 in the Civil Court at Upleta. A compromise was arrived at in the said proceedings and the Municipality agreed to pay the scale of Rs. 330-560 with effect from 1.2.1979 subject to the approval of the Government. However, despite this compromise the said scale was not given to Mr. Turiya because the Government had not given its approval. Mr. Turiya therefore filed an application No. 33 of 1983 before the Gujarat Affiliated Colleges Services Tribunal praying for the award of the said scale of Rs. 330-560. In the said proceedings the Director of Education, Gujarat State was impleaded as party respondent No. 4. The Tribunal found that Mr. Turiya was justified in claiming the said pay scale from 1.2.1979 because in view of the compromise he was to be given the said scale with effect from that date. The Tribunal therefore directed that Mr. Turiya should be paid the said scale from 1.2.1979 and be given the difference on that basis which would be admissible for the purpose of the grant. That

order was never challenged by the Director of Education though it in terms ordered the difference to be admissible for the purpose of grant. A copy of the order of the Tribunal is placed on the record for perusal of the court by the parties.

3. The case of the respondent No. 1 is that in view of the Resolution dated 7.4.1978 of the Government, maximum number of non-teaching staff whose salary would be admissible for the purpose of grant has been prescribed and salary bills of only such employees who are appointed according to the schedule to the said Resolution could be passed. According to the respondents, grant-in-aid would be admissible only in respect of sanctioned post and not for the other staff. It is submitted that Mr. Turiya was working as a junior clerk in the scale of Rs. 260-400 and was given special allowance of Rs. 30/- per month as a cashier and therefore he should not be given the pay scale of Rs. 330-560. It is submitted that under the orders of the Tribunal it was the petitioner No. 2 Municipality who was directed to give the pay scale of Rs. 330-560 to Mr. Turiya and therefore the respondents are not required to pass the bill of Mr. Turiya on that basis. It is also submitted that till August 1984 correct information regarding number of students in the college was not supplied to the authorities. It is submitted that in the month of October 1984 for the first time Mr. Turiya was shown to be senior clerk in the pay scale of Rs. 330-560 and that as only one post of senior clerk was sanctioned grant-in-aid could not have been given for the second post.

4. Mr. Turiya who was a qualified person was appointed as a cashier when the post fell vacant and he was working as a cashier from 1.2.1979. This was done pursuant to the directions of the University which fact is borne out from the record. One fact which is overlooked by the respondents is that though the post of cashier was grouped along with junior clerks' post in the pay scale of Rs. 260-400 its scale was revised with effect from 1.4.1974 under Ordinance 189(3)(A) which reads as under:

"With effect from 1.4.1974 the scales of pay of the employees of various cadres in the service of colleges shall be as under and shall stand automatically revised with revision of pay scales done by the University in the corresponding cadres of its own employees from time to time:

Item No.(5)

Senior Clerk, Rs.330-12-380-EB-12-440-EB-15-560

Store Keeper,

Cashier,

Asst. Accountant

Item No. 6 to Item No. 10.....

The University had issued a circular on 1.3.1977 bearing No. 1801-77 which recorded the revision of the pay scales including for the post of cashier. A copy of the circular and the ordinance are placed on record at the instance of both the sides for the perusal of the court. It will be seen from the averments made in paragraph 5 of the affidavit-in-reply of the respondent No. 1 that earlier the post of cashier was in the scale of Rs. 260-400 and was grouped with junior clerks and library clerks. It is therefore clear that the post of cashier was under the revised scales placed along with the senior clerks, asst. accountants, store keeper in the scale of Rs. 330-560. This aspect has been wholly overlooked while preparing the affidavit-in-reply. It is because of this change that Mr. Turiya was insisting for the pay scale of Rs. 330-560 and the Municipality relented by compromising in the Civil Suit and yielding to the correct position which entitled Mr. Turiya to the pay scales of Rs. 330-560. It is abundantly clear that Mr. Turiya had all along worked as cashier from 1.2.1979 and the averments that the pay bill for the month of October 1984 was prepared showing him as a senior clerk which has been made in paragraph 10 of the affidavit-in-reply is an obvious error, because, it has been pointed out from the consolidated salary statement for the month of October, 1984 to the court as also to the learned counsel for the respondents by the petitioners from their records that Mr. Turiya whose name appears at serial No. 34 of the pay bill for the month of October 1984 is shown to have been working as a cashier in the scale of Rs. 330-560. In fact the respondent No. 1 was sanctioning the pay bills of Mr. Turiya in the pay scale of Rs. 330-560 upto the month of November 1984 without any objection as stated in paragraph 13 of the petition. Because Mr. Turiya had established his claim, the Tribunal gave a declaration that he was entitled for the said pay scale of Rs. 330-560 with effect from 1.2.1979 as per the terms which was entered into on the basis of the pay scale prescribed by the Saurashtra University, the municipality was therefore directed to pay him salary on the basis of the said pay scale from 1.2.1979 and accordingly pay difference of salary to him which was directed to be admissible for the purpose of the grant.

Therefore, the defendant No. 1 was bound by the direction of the Tribunal to release the amount of difference in favour of Mr. Turiya on the basis that it was admissible to grant. This order of the Tribunal was not challenged by the Director of Education and therefore it became final and binding on him in view of the provisions of Section 12 of the Gujarat Affiliated Colleges Services Tribunal Act, 1982 which provides that every decision of the Tribunal shall be final and shall not be called in question before any civil court or any other authority. The respondent No. 1 cannot now be heard to contend that the amount of difference was not admissible to the grant and that the respondent No. 1 is not bound to pay the same to Mr. Turiya. To say the least the stand taken up by the respondents in their affidavit-in-reply and through their counsel is wholly unjustified.

5. Under the above circumstances writ of mandamus is issued on the respondents Nos. 1 and 2 directing them to release the salary of deceased Mr. B.K. Turiya who was serving as a cashier with the petitioner No. 1 college on the basis that he was entitled to the pay scale of Rs. 330-560 and work out and pay his dues directly to the widow of late Mr. Turiya by finding out her whereabouts. This should be done expeditiously within six weeks from the date of receipt of the writ of this order by the office of the respondent No. 1. Rule is made absolute accordingly with order as to costs.

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